



THE CITY OF NEW YORK
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October 6, 2014

BY ECF

Honorable Pamela K. Chen
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Courtney Dupree v. City of New York, et al.,
14 CV 4307 (PKC)(MDG)

Your Honor:

I am an Assistant Corporation Counsel in the Office of Zachary W. Carter, Corporation Counsel of the City of New York, and the attorney representing defendants City of New York, Sergeant Michael Vitale, Sergeant Timothy Horohoe, Detective Juan Fernandez, Detective Michael Arena, and Police Officer Patrick Chilton (collectively “City Defendants”) in the above-referenced matter. Pursuant to Your Honor’s Individual Practices, City Defendants respectfully request that the Court schedule a pre-motion conference to discuss City Defendants’ proposed motion to dismiss the complaint pursuant to F.R.C.P. 12(b)(6).

By way of background, on or about July 14, 2014, plaintiff filed the instant complaint alleging that, on or about March 27, 2013, he was falsely arrested and thereafter maliciously prosecuted by officers of the New York City Police Department. (Pl.’s Compl. at ¶ 2) Plaintiff specifically alleges, *inter alia*, that on the date in question he was arrested and charged with aggravated harassment in retaliation for an internet posting he had made that was critical of the NYPD. (Pl’s Compl. at ¶¶ 62–67)

At this juncture, defendants believe there is a good faith basis to dismiss plaintiff’s claims for failure to state a claim upon which relief may be granted. In short, (1) the

post in question¹ provided the defendants with probable cause for plaintiff's arrest and prosecution, defeating all the claims except denial of the right to a fair trial; (2) even if probable cause was lacking, the individual defendants are entitled to qualified immunity; (3) plaintiff's malicious prosecution and denial of the right to a fair trial claims fail for the additional reason that plaintiff does not allege that any defendant made any false statement to the District Attorney's Office or fabricated any evidence; (4) the complaint fails to allege a municipal policy or practice that would give rise to a viable claim against the City of New York; and (5) plaintiff's request for an injunction should be dismissed for both mootness and lack of standing, given that the law plaintiff seeks to enjoin is no longer enforceable.

For the reasons set forth above, City Defendants respectfully request that the Court schedule a pre-motion conference regarding City Defendants' anticipated motion to dismiss the complaint for failure to state a claim upon which relief may be granted. In the alternative, defendants request that the Court endorse the following proposed briefing schedule, which is proposed on behalf of the parties:

- Defendants' motion due October 31, 2014
- Plaintiff's opposition due December 12, 2014
- Defendants' reply due December 29, 2014

Thank you for your consideration in this regard.

Respectfully submitted,

/s/

Daniel Passeser
Assistant Corporation Counsel

¹ The post in question, which is referenced in the complaint and will be attached as an exhibit to defendants' anticipated motion, reads as follows:

50'z OUTLAWZ PLACE 10 STACKS ON ANY OFFICER HEAD
DUE TO THE SLAUGHTER OF THE YOUNG BROTHER KIMANI
GREY(R.I.P.) AT THE HANDS OF TWO DETECTIVES.. BOTTOM LINE NIGGAS
PLACED(10 STACKS)ON ANY COP. THEM NIGGAS REALLY ABOUT THAT LIFE
(OUTLAWZ&BEAMER) IF YOU A BROOKLYN NIGGA THEN YOU KNOW WASSUP.
ALL IM SAYING IS I. ANT WAIT TILL SOMEBODY SMOKE ONE OF THEM PIGS. AND
MANY MORE. THEY HARASS BLACK AND BROWN COMMUNITYS 24/7 GOT SHIT
FEELING LIKE PARA-MILITARY CAMPS. FUCK THE POLICE !!!! IF YOU HAVE
ANYONE THAT'S FAMILY OR. MAYBE A FRIEND IN LAW ENFORCEMENT. THEY
ARE PART OF THE PROBLEM T. (OPPRESSION)

cc: BY ECF
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